

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 887 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.G.BALAKRISHNAN

and

MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
 2. To be referred to the Reporter or not? No
 3. Whether Their Lordships wish to see the fair copy of the judgement? No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge? No
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GUJARAT CO-OPERATIVE OIL SEEDSGROWERS FEDERATION LTD.

Versus

UNION OF INDIA

Appearance:

MR KS NANAVATI for Petitioner

MR KETAN A DAVE for Respondent No. 1

MR JD AJMERA for Respondents No. 2, 3, 4, 5

CORAM : MR.JUSTICE K.G.BALAKRISHNAN

and

MR.JUSTICE J.M.PANCHAL

Date of decision: 19/02/98

ORAL JUDGEMENT

(Per : Panchal,J.): -

In this petition, which is filed under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ, order or direction to quash and set aside Circular dated March 29, 1990 issued by the Director (Oils), Government of India, Ministry of Food & Civil Supplies, prescribing ceiling of 9% recovery of oil for issuance of certificate contemplated by notification dated October 11, 1989, which is issued under Rule 57K of the Central Excise Rules, 1944. The petitioner has further prayed to issue an appropriate writ declaring that the action of respondent no.1 in withholding issuance of certificate under Clause (iv) of the notification no.45/89 dated October 11, 1989 is illegal.

2. The petitioner is a licensed manufacturer of solvent extracted mustard oil. The mustard oil so extracted is used in the manufacture of vanaspati. In exercise of powers conferred by Rule 57K of the Central Excise Rules, 1944, Central Government by a notification dated October 11, 1989 as amended by notification no.13/90-CE (NT), dated March 20, 1990 has specified the inputs used in the manufacture of final products, namely, vegetable products falling under sub-heading No.1504.00 or margarine falling under sub-heading No.1508.90 of the Schedule to the Central Excise Tariff Act, 1985 and the rates at which credit of money is to be given for use of such inputs in the manufacture of final products. A copy of notification is produced by the petitioner at Annexure-A to the petition. The procedure for availing of benefit of the credit of money as envisaged under Rule 57K is prescribed in the notification. One of the conditions stipulated in the notification is that in case of solvent extracted variety of the oil, the manufacturer has to produce a certificate from an officer not below the rank of Deputy Director in the Directorate of Vanaspati, Vegetable Oils and Fats in the Ministry of Food and Civil Supplies of the Government of India to the effect that the said oil has been manufactured by solvent extraction method. A trade notice has been issued vide letter no. B.2/2/87-TRU, dated April 20, 1987 prescribing procedure for obtaining certificate necessary for claiming credit of money for use of solvent extract oils in the manufacture of vanaspati. It is produced at Annexure-B to the petition. The respondent no.1 issued Circular dated March 29, 1990, which is produced at Annexure-C to the petition stipulating a condition that the manufacturer of solvent extracted oil would be

eligible to the certificate as envisaged under the notification dated October 11, 1989 only if oil recovery is not more than 9%. The said circular is produced by the petitioner at Annexure-C to the petition. The petitioner applied for certificate in order to avail of credit of money, but it was not granted, as it was found that percentage of oil recovery was approximately 11%. The petitioner has averred in the petition that stipulation of condition in the Circular that oil recovery percentage should not be more than 9%, is not only arbitrary, but illegal and, therefore, Circular deserves to be quashed. What is pleaded in the petition is that executive instructions can supplement a statute or cover areas to which the statute does not extend, but they cannot run contrary to the statutory provisions or whittle down their effect and as Circular dated March 29, 1990 whittles down effect of the provisions of notification, Circular should be set aside. Under the circumstances, the petitioner has filed present petition and claimed reliefs to which reference is made earlier.

3. Mr. V.P. Awasthy, Assistant Director in the Directorate of Vanaspathi, Vegetable Oils and Fats in the Ministry of Food and Civil Supplies, Government of India, has filed affidavit-in-reply on behalf of respondent no.1 and controverted the averments made in the petition. In the reply affidavit it is, inter-alia, contended that the petition suffers from vice of delay and laches and, therefore, it should be dismissed. It is mentioned in the reply affidavit that even before issuance of notification dated October 11, 1989, certificate was issued only if oil recovery was not more than 9% and, therefore, the Circular dated March 29, 1990 cannot be regarded as either arbitrary or illegal. It is pleaded in the reply affidavit that excise duty concession under notification no.45/89, dated October 11, 1989 is intended to encourage extraction of residual oil left in the oil cakes which may go waste and, therefore, Circular which is in larger interest of all, should not be struck down by the Court. What is claimed in the reply is that power to issue certificate includes power to decide the norms on the basis of which certificate can be issued and as Circular covers areas to which the notification does not extend, the reliefs claimed in the petition should not be granted. By filing affidavit-in-reply, respondent no.1 has demanded dismissal of the petition.

4. We have heard the learned Counsel for the parties. Rule 57K of the Central Excise Rules, 1944 under which the notification no.45/89, dated October 11,

1989 is issued, reads as under :-

RULE 57K. Applicability and extent of credit-

(1) The Central Government may, by notification in the Official Gazette, specify-

(a) the finished excisable goods (hereinafter referred to as "final products") and the raw materials used in the manufacture of such final products (hereinafter referred to as "inputs"), to which alone the provisions of this section shall apply; and

(b) the rates at which the credit of money is to be given for use of such inputs in the manufacture of final products.

(2) When a notification has been so issued under sub-rule(1), credit at rates specified therein may be allowed for use of such inputs in the manufacture of such final products and the credits so allowed may be utilised for payment of duty on the final products, subject to the provisions in this section and the conditions if any, stipulated in the said notification.

A bare reading of sub-rule(2) of Rule 57K makes it abundantly clear that when a notification has been issued under sub-rule(1), credit at rates specified therein has to be allowed for use of such inputs in the manufacture of final products and credits so allowed may be utilised for payment of duty on the final products, ofcourse subject to the provisions of Rule 57K and the conditions which may be stipulated in the notification. In the notification, it is nowhere provided that the oil recovery for excise rebate admissible should not be more than 9%. In terms of Clause (iv) of the said notification, the manufacturer has to establish that solvent extracted variety of the oil has been manufactured by the solvent extraction method and if it is so established, then he is entitled to issuance of certificate contemplated by notification. The only condition stipulated for entitling the manufacturer to the certificate is that said oil should be manufactured by solvent extraction method and no other condition is stipulated in the notification at all. However, the Circular stipulates another condition viz. the manufacturer would be entitled to certificate only if it is shown that oil recovery is not more than 9%. In our

view, new eligibility criteria is introduced by certificate dated March 29, 1990, which is not found in the notification at all. It is well settled that no benefit made available under a statutory notification can be denied or abrogated by issuance of a Circular. A benefit made available under a statutory notification can be whittled down or withdrawn by another notification, but not by a Circular. In the case of State of M.P. vs. G.S.Dall and Flour Mills, A.I.R. 1991 S.C. 772 the Apex Court has held that executive instructions can supplement a statute or cover areas to which the statute does not extend, but they cannot run contrary to statutory provisions or whittle down their effect. Having regard to the contents of Circular dated March 29, 1990, we are of the opinion that it whittles down the effect of notification by prescribing that certificate would be issued to the manufacturer only if oil recovery is not more than 9%. As the effect of statutory notification could not have been whittled down by issuance of Circular dated March 29, 1990, we are of the view that the additional condition prescribed in Circular dated March 29, 1990 requiring manufacturer to show that oil recovery is not more than 9% will have to be set aside.

5. The submission that as there is delay and laches in filing the petition, the petition be dismissed, cannot be accepted because prescription of additional criteria for claiming certificate is void and said eligibility criteria does not get validated with passage of time. However, delay may be relevant for the purpose of moulding reliefs which are claimed by the petitioner.

For the foregoing reasons, the petition succeeds. The condition prescribed in Circular dated March 29, 1990 which is produced at Annexure-C to the petition requiring manufacturer to show that recovery of oil should not be more than 9% is hereby set aside and quashed. The respondents are directed to process the application submitted by the petitioner for issuance of certificate on the basis of notification no.45/89, dated October 11, 1989 as amended by notification no.13/90-CE(NT), dated March 29, 1990 and while processing the applications, the respondents shall not take into consideration additional condition stipulated in Circular dated March 29, 1990 requiring the manufacturer to show that oil recovery is not more than 9%. Rule is made absolute accordingly, with no order as to costs.

patel

